

DEPARTMENT OF SOCIAL SERVICES



744 P Street, Sacramento, CA 95814

May 20, 1991

ALL COUNTY LETTER NO. 91-42

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL SDSS ADOPTIONS DISTRICT OFFICES

SUBJECT: ADOPTIVE PLACEMENTS OF PARTIALLY FREED CHILDREN AND
ADOPTIVE PLACEMENTS DURING THE PERIOD OF APPEAL FROM AN
ORDER FOR TERMINATION OF PARENTAL RIGHTS

The Adoptions Branch has received several inquiries regarding the adoptive placement of a partially freed child and the adoptive placement of a child whom the court has ordered free from the custody and control of his/her parents pursuant to Civil Code (CC) Section 232. This Letter is to inform agencies of the requirements that they must follow in each of these situations.

PLACEMENTS OF PARTIALLY FREED CHILDREN

Section 35031(a) of Title 22, California Code of Regulations requires the adoption agency to terminate the legal relationship between a child and the child's parents prior to making an adoptive placement. This section also permits the agency to make an adoptive placement of a partially freed child ONLY in a very specific situation; i.e., the child has been placed with assessed and approved prospective adoptive parents with the approval of the agency's administrator and (1) the birth mother and presumed father, if any, have signed a relinquishment for adoption; (2) the relinquishment has been filed with the department; and (3) an action under CC Section 7017 or 7006 to terminate the parental rights of an alleged natural father is pending. Only a pending CC Section 7017 or 7006 action applies in this situation. Any other termination of parental rights (CC Section 232 or Welfare and Institutions Code Section 366.26) must be completed prior to making the adoptive placement.

The Department interprets a pending CC Section 7017 or 7006 action as one in which the petition has already been filed with the court at the time the adoptive placement is made.

PLACEMENTS DURING PARENTAL RIGHTS TERMINATION APPEAL PERIOD

When the court has declared a child free pursuant to CC Section 232, and any other parent's rights have been properly terminated, an adoptive placement may be made prior to the exhaustion of the appellate rights of the parent(s). Civil Code Section 239(b) states: "At the request of the State Department of Social Services or a licensed adoption agency, or where the court finds it is in the minor's best interest, [the court shall] refer the minor to a licensed adoption agency for adoptive placement by the agency; however, no petition for adoption may be heard until the appellate rights of the natural parents have been exhausted. The agency shall be responsible for the care of the minor, and shall be entitled to the exclusive custody and control of the minor at all times until a petition for adoption has been granted. After such a referral no petition for guardianship may be filed without the consent of the agency."

While some agencies have interpreted this statute to mean that the parents' appeal rights must be exhausted before an adoptive placement can occur, it is the Department's position that once a court has declared a child free in a "232" action, and any other parent's rights have been properly terminated, the agency is permitted to make an adoptive placement. However, a petition to adopt the child cannot be filed until the appellate rights of the parent(s) have been exhausted per CC Section 239(b). Since the parent has 60 days in which to appeal the court's action, the petition to adopt the child cannot be filed until a minimum of 60 days has elapsed.

If you have any questions on these issues, please contact the Adoptions Policy Bureau at the above address or at (916) 322-4228 (ATSS 492-4228).



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cc: CWDA